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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5778 OF 2005

M/s.Anand Auto Corporation ... Petitioner

V/s.

Ms.Philoo Dadabhoy Broacha & Ors. ... Respondents

Mr.S.S. Purohit i/b V.D. Dhingreja for Petitioner
Mr.Bharat S. Mehta for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 20, 2005**

P.C.:

. This Petition has been filed against the order of the appellate Court permitting the plaintiff to join the deceased tenant viz., G.R. Mahimkar's heirs and legal representatives as defendants to the suit. The suit has been filed by the Plaintiffs on the ground of illegal subletting. The defendant before the trial Court is the Petitioner against whom it is contended that is is an unlawful sub-tenant. In its written statement the Petitioner has raised the contention that the suit is not maintainable because of the non-joinder of the necessary parties. According to the Petitioner, since the original tenant G.R. Mahimkar was not joined as a party-defendant, the suit itself was not maintainable.

2. It appears that the evidence has been recorded and the matter was set down for arguments. At this stage, an interim notice was moved by the plaintiffs praying that they be permitted to join the heirs of G.R. Mahimkar, the original tenant as party defendants to the suit. The trial Court has, in my view, rightly discharged the interim notice.

3. Aggrieved by this decision of the trial Court, the plaintiffs moved the appellate Court. The appellate Court, while making absolute the interim notice, allowed the plaintiffs to amend the plaint and join the heirs and legal representatives of the deceased tenant G.R. Mahimkar as party-defendants. It is this order which has been challenged by the Petitioner, the sole defendant before the trial Court.

4. Mr.Purohit, learned Advocate appearing on behalf of the Petitioner, submits that the entire order of the appellate Court is misconceived. He submits that no amendments can be permitted under Order 6 Rule 17 after the evidence has been closed and when arguments are to commence. The Petitioner has been greatly prejudiced by the appellate Court making the notice absolute. He also submits that the suit was filed in the year 1985 at

which point of time it was always open for the respondents to rectify the mistake. Even in 1997 when the written statement was filed pointing out the defect in the plaint, the respondents took no action in that regard and waited till the evidence was completed. The learned Advocate submits that Order 6 Rule 17 does not permit the parties to join a party to the suit at any time much less after the evidence is recorded and closed.

5. On the other hand, Mr.Mehta, learned Advocate for the Respondents, submits that subject to the provisions of the Limitation Act a defendant shall be deemed to have been added only when the summons is served upon him. According to him, section 22 of the Limitation Act permits such an amendment. He also submits that it is a well settled position in law that amendments can be granted at any stage and there would be no question of the amendment being barred by limitation.

3. The entire submission of the learned Advocate for the respondents, begs the question as to whether the amendments sought should be allowed under Order 6 Rule 17. The appellate Court has proceeded on the footing that the amendment sought at the stage after the

evidence was closed is not barred by limitation. However, the appellate Court has not considered the fact that such an amendment would preclude the Petitioner's defence before the trial Court, namely that the suit is bad for non-joinder of parties. Moreover, Order 1 Rule 9 of the Code of Civil Procedure provides that the suit can be defeated when there is non-joinder of a necessary party. It is the plaintiffs' case before the trial Court that the Petitioner was a sub-tenant and unless the plaintiff joins the original tenant, the suit against him cannot be decreed.

6. In such circumstances, an amendment which will cause prejudice to the original defendant who the landlord claims is an unlawful sub-tenant cannot be permitted, in any case at this belated stage. Petition allowed. The impugned order of the Appellate Court is set aside.